

## Doctor-Patient Relationship

Morton Winston: "AIDS,  
Confidentiality, and The Right to  
Know"

### The Case: Nurse breaches confidentiality

An emergency nurse, from her own initiative, tells the rescue workers that the patient they brought was infected with the AIDS virus. The rescue workers were exposed to a lot of the patient's blood when they rescued her.

Questions:

- Who has the right to know that they may have been exposed to AIDS or other dangerous infectious diseases?
- Whose responsibility is it to inform the sexual contacts of AIDS patients or others who may have been exposed to the infection?
- Can public health policies be framed which will effectively prevent the spread of the epidemic while also protecting the civil and human rights of its victims?

### Justification for Confidentiality

The Argument from Autonomy

What is the rule of medical confidentiality (a.k.a. doctor-patient confidentiality) meant to protect and what does it prohibit?

Some arguments saying why the rule is justified:

We have the right to direct our own lives according to how we think they should go.

The knowledge others have of our personal info can impact our lives. So we have the right to determine who does and does not gain such knowledge.

[Of course, with rights there are corresponding duties. Our right, then, corresponds to the duty of others to neither inquire into nor divulge (e.g. physicians) our personal information].

### Justification for Confidentiality

The Argument from Transparency

Transparency is important (oftentimes essential) to receiving proper medical care. If patients can't trust medical practitioners to keep their 'secrets', they will not seek medical care.

So there must be a strict obligation to keep personal info in confidence.

The rule of medical confidentiality, while stringent and morally justified, is not absolute.

### Justification for Confidentiality

Argument from potential discrimination or harm

Without confidentiality there is a risk of the individual's sensitive personal information being revealed to third parties, thereby exposing the individual to the risk of unjust discrimination or other harm.

### Limits to Confidentiality

Bok's view: Harm Principle

**Bok:** confidentiality is, at best, a *prima facie* obligation. That is, it can be overridden by a stronger moral obligation. Usually confidentiality is overridden by some form of the harm principle

**Harm principle (HP):** a principle that requires moral agents to refrain from acts and omissions which would foreseeably result in preventable wrongful harm to innocent others.

- **E.g., cases involving :**
  - a minor child who would be harmed if sensitive information were not disclosed to a parent or guardian
  - threats of violence against identifiable third parties
  - Contagious sexually transmitted diseases

### HP is too broad

Defenders of HP hold that all moral agents have a general obligation with respect to all moral agents to

- (a) Avoid harm
- (b) Prevent or protect against harm, and
- (c) Remove harm

Winston thinks that this kind of definition would include things that are not harmful:

- One baseball team defeats another
- I took the last scoop of mint chocolate chip ice cream when the customer behind me wanted the same flavor.

### Vulnerability Principle (VP)

The Vulnerability Principle states: the duty to protect against harm in contexts in which someone is specially dependent on others or in some way specially vulnerable to their choices and actions. (reader 180)

- **VP is more precise than HP in circumstances where a strict duty to protect others arises.**
  - E.g., "Children, as a class, are especially vulnerable and lack the ability to protect themselves. Being a parent *intensifies* the duty to prevent harm to children (e.g., duty to inoculate them), by focusing the duty to protect the vulnerable on individuals who are specially responsible for the care of children. For other adults, on the other hand, I have no strong duty to protect, since I may generally assume that mature moral agents have both the ability and the responsibility to protect themselves." (181)

### **VP applied to HIV case**

Did the nurse do the right thing given VP?

Winston thinks yes.

“...health care workers, whether they work inside or outside of the hospital, are in a relevantly different moral situation than ordinary people who are not routinely exposed to blood and who have no special duty to provide care, and this makes them specially vulnerable.” (181)

### **What about another case?**

Let's say that John is infected with the AIDS virus and discloses to his doctor that he is not going to tell his fiancée.

What should the physician do in light of HP + VP?

Winston thinks that these cases show that the rule of confidentiality is not absolute. The basic question is:

*“Is the individual to be notified someone who is specially vulnerable? That is, are they someone who faces a significant risk of exposure to the infection, and, will revealing confidential information to them assist them in reducing this risk to themselves or others?”* (182)

### **VP suggests breaches in confidentiality is justified when...**

1. There is an identifiable person or an identifiable group of people who are “at risk” of contracting AIDS from a known carrier
2. The carrier has not or will not disclose his/her antibody status to those persons whom he/she has placed or will place at risk, and
3. The identity of the carrier and his/her antibody status is known to a physician, nurse, health care worker... privileged to this information.

### **A Case about HIV and Confidentiality**

Commentary by Leonard Fleck and Marcia Angell

### The Case

Carlos, a 21-year-old Hispanic male, is about to end his hospital stay for gunshot wounds and receive nursing care at home from his sister, Consuela. Secretly homosexual and concerned about disgrace within his family, Carlos pleads with the attending physician not to inform his sister that he (Carlos) is HIV-positive. Yet not informing Consuela would seem to increase her risk of contracting HIV while attending his wounds.

Our question: Should the physician inform Consuela that Carlos has HIV even though Carlos doesn't want this to happen for fear of being ostracized by his father and his larger Hispanic community?

### Fleck's Answer

Fleck says: no, the physician should not break confidentiality.

A medical practitioner is required to ignore the rule of medical confidentiality only if all of the following three conditions are met:

- (1) A third party(s) faces an imminent threat of serious and irreversible harm.
- (2) The harm that would befall the third party(s) if confidentiality is not broken must be proportional to the harm that would face the patient if confidentiality is broken.
- (3) The only way to stop the harm in question from befalling the third party(s) is to break confidentiality.

### His Argument

For Fleck, none of the three conditions are met.

Why isn't condition (1) met? [A third party(s) faces an imminent threat of serious and irreversible harm].

Reply:

- The threat to Consuela is not imminent. The likelihood of her contracting HIV is very remote.
- The harm likely to befall Consuela if confidentiality is not broken is seemingly less than the harm Carlos will likely face if confidentiality is broken.

### His Argument

Why isn't condition (2) met? [The harm that would befall the third party(s) if confidentiality is not broken must be proportional to the harm that would befall the patient if confidentiality is broken].

Reply: The harm likely to befall Consuela if confidentiality is not broken is seemingly less than the harm Carlos will likely face if confidentiality is broken.

What is the harm likely to befall Consuela if the physician keeps silent?

- She *perhaps* will become a bit more lax and careless in how she protects herself than she otherwise would.
- She may become angry or disappointed if she finds out later??

What is the harm likely to befall Carlos if confidentiality is broken?

### His Argument

Why isn't condition (3) met? [The only way to stop the harm in question from befalling the third party(s) is to break confidentiality].

Reply: The physician can admonish Consuela about the need to take universal precautions, and provide her with the necessary equipment and training.

For Fleck, since none of the three conditions are met, the physician is not required to tell Consuela.

Has Fleck given a convincing case?

### Response to Fleck

Consuela has a right to know (regardless of the remote chance that she'll be infected).

- A nurse in her position would want to know, and would probably be told (see Angell).
- Carlos implied consent by assuming treatment
- Consuela *qua* nurse, she is under the rule of medical confidentiality.

### Question

But what if the physician is certain that Consuela (despite his admonition about being under the rule of confidentiality) will either tell the father or not treat Carlos, or both?

Perhaps a way out of the dilemma is to insist that it's the hospital's (or Medicaid's) responsibility to treat Carlos, despite the fact that he is uninsured and they don't want to (see Angell).

But, again, what if he is certain that the hospital will not adhere to their duty and treat Carlos?